

Commissions of Inquiry

Their Limitations

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11 July 1964

The inquiry by the Das Commission into allegations of corruption and misuse of power by the ex-Chief Minister of Punjab has once again focussed attention on the limitations of investigations conducted under the Commissions of Inquiry Act.

First, the initiative in the appointment of a commission of inquiry rests entirely with the executive. It is not an unwarranted presumption that the executive will not institute an inquiry into its own actions — that is what most inquiries are — unless forced to do so by strong outside pressure.

Second, it is open to the executive to define the terms of reference of a Commission in such a manner as to defeat, to the maximum extent possible, the purpose of the inquiry.

Further, under the Commissions of Inquiry Act the executive is not obliged to make public the findings of Inquiry Commissions.

Nor are the findings binding on the executive. The executive's response may vary from outright rejection of an inquiry report to slack corrective action — taking advantage of the shortness of public memory.

The public inquiry made into the allegations against Sardar Pratap Singh Ka-iron by an ex-Chief Justice of the Supreme Court, Shri SR Das offers an interesting case study of the utility and limitations of an inquiry set up under the Commissions of Inquiry Act, 1952. Inquiries under the Act may be instituted into individual grievances, as in the well-known Crichton case in Britain. Or, the Act may be used to inquire into serious shortcomings in administration — e.g., the Denning Inquiry into the Profumo–Keeler affair and the inquiries conducted in connection with the LIC–Mundhra scandal. The inquiry by Shri S R Das was into allegations of political corruption.

In India, *ad hoc* inquiries — which is their popular description — are more likely to be used for the latter two purposes, though in discussing their utility and

limitations we cannot exclude any other purpose from consideration. Section 3 of the Commissions of Inquiry Act makes it clear that a Commission of Inquiry may be appointed by the appropriate Government for the purpose of “making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification.”

The Act confers on the Commissions constituted under it wide powers which include, in addition to those of a civil court, powers to require any person, subject to any privileges he may claim under the law, to furnish relevant information on the subject matter of the inquiry and to enter any building and seize any books of accounts or documents or take extracts or copies therefrom. As to procedure, according to section 8 of the Act, “the Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members.”

Scope of Inquiry

The scope of an Inquiry Commission has been well described by Shri Das in the Kairon Inquiry Report (p. 18). The inquiry to be made by the Commission differs from a civil litigation or a criminal proceeding before an ordinary court of law. In a civil action, there is a plaintiff and a defendant and a *lis* or issue between them which the plaintiff may choose to abandon. In a criminal case, there is a prosecutor and an accused and a charge which the prosecutor may withdraw, with or without the permission of the court as prescribed in the Code of Criminal Procedure. In both cases the issue or charge has to be determined in the court by a judgment or order which becomes binding and enforceable as between the parties.

In an inquiry under the Commissions of Inquiry Act, however, there is no plaintiff or prosecutor, there is no defendant or accused and there is no *lis* or charge to be adjudicated upon by the Commission by a judgement or order which will be binding and enforceable. In short, the Commission is not expected and, indeed, is not competent to finally adjudicate upon any issue or charge or pronounce any judgment or order which will be binding and enforceable. Its function is only to inquire and to report to the appropriate Government. In other words, the Commission is a machinery set up by the appropriate Government to inquire into a definite matter of public importance, to collect such relevant material as it may and make a report to the Government, containing its own views, on the basis of such materials so as to inform

the mind of the Government and to enable it to take such action as it may in the circumstances think fit.

The rationale and utility of the device of the Commission of Inquiry has been well argued by Lord Chancellor Viscount Kilmuir while defending in the House of Lords the Tribunals of Inquiry Act 1921, on which our Act is modelled, during the debate on the Waters Tribunal in 1959: "Let me state quite shortly the argument for some such procedure as the present. The sanction of the public inquiry is necessary on occasions for the purpose of maintaining a high standard of public administration and, indeed, of public life. The modern system has developed in consequence of the inadequacies of the machinery of inquiry by Select Committee, on the one hand, and limitations of the ordinary process of law, on the other. The ordinary processes of law are geared to a charge or claim brought by one person against another. They do not fit when it is necessary to discover what has actually happened before the responsibility of or between individuals can arise, and ... there are other fields, such as wreck inquiries, inquiries into accidents. courts of inquiry on the Services and the Committee of Privileges of the House of Commons, where the inquisitorial procedure is a necessary concomitant of their work. In all those cases. the question of discovering what has actually happened is of prime importance ... After the true facts have been found and stated it may be necessary to stigmatise conduct which, although not a criminal offence or a civil wrong, falls short of requisite standard of our public life. It may be necessary to kill harmful rumours which are found to be unjustified. It may be necessary — and this I am sure is very much in the minds of the Government who introduced this measure to restore public confidence in public conduct and administration. These ends may well be of much importance to life and nation as to justify means which inflict hardship on individuals."

The Supreme Court has explained the importance of the findings of the Commission of Inquiry in *Shri Ram Krishna Dalmia vs Justice S R Tendolkar and others* thus: "The whole purpose of setting up a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view, the recommendations of the Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative and administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view."

The Das Commission's Inquiry into the allegations against Sardar Pratap Singh Kairon has brought to light certain shortcomings of the inquiry procedure. First,

the initiative in the appointment of a Commission rests entirely with the executive. It is not an unwarranted presumption that executive will not take this initiative to inquire into its own actions — that is what most inquiries are — unless forced to do so by strong outside pressure. Such pressure may come from the Press, a group of determined individuals or opposition legislators. The charges against Kairon, which in many cases were found to be true by the Das Commission, were first presented to the executive in 1959. But the late Prime Minister preferred a Congress Party inquiry and satisfied himself that the charges were baseless. He drew attention to this inquiry and its findings while announcing the appointment of the Das Commission. The first paragraph of the Memorandum submitted to the President by those who framed the charges against Kairon reads as follows: “being highly aggrieved by the misdeeds and blatant acts of corruption and gross misrule of the present Punjab Chief Minister, Sardar Pratap Singh Kairon, and being further aggrieved by the partisan handling by the present Prime Minister, Shri Jawaharlal Nehru, of the series of complaints containing documentary proof, (we) approach the President of India with this Memorandum praying for a public inquiry ...”

Loopholes for the Executive

Even while announcing the inquiry Pandit Nehru made an elaborate statement, the burden of which was that there was no need for an inquiry, and that, in any case, Sardar Kairon was indispensable to the Punjab, but that there were some people who insisted on having an inquiry and they had approached the President directly and that, therefore, the Government had been forced to have an inquiry. The Government’s reluctance to appoint a Commission of Inquiry was equally obvious in the Malaviya–Serajuddin affair. The Opposition Member of Parliament who had levelled the charges against Shri Malaviya went so far as to offer to resign his seat in Parliament if his charges were proved false, before the inquiry was conceded.

The executive can dodge the demand for an inquiry till its hands are forced. Then comes the question of the Commission’s terms of reference where again there is much scope for executive mischief. The Das Commission’s task was to enquire into the charges made in the Memorandum submitted to the President. The Commission was confronted with a vital phrase in the Memorandum; it was required to interpret the words ‘and his family’ occurring therein. Two interpretations were suggested: Pratap Singh Kairon’s family and Surindar Singh Kairon’s family. The Commission accepted the former, remarking. “It must be remembered that the Memorandum is not a statute, deed or other legal document which must be construed strictly. It

is neither more nor less than a catalogue of grievances against Sardar Pratap Singh Kairon and should, therefore, be read and understood as an informal document in that light. The language employed in this inartistic document must be construed according to its apparent tenor and intention.”

The Committee on Administrative Tribunals and Enquiries appointed in the UK faced the same difficulty. Being limited by its terms of reference to those disputes between the individual citizen and authority in which formal machinery for appeal or review before final decision already existed, the Committee stated in its report: “But over most of the field of public administration no formal procedure is provided for objecting or deciding on objections — it may be thought that in these cases the individual is less protected against unfair or wrong decisions. But we are not asked to go into questions of maladministration which may arise in such cases.” As a result, even the Crichton case, which gave rise to the inquiry, fell beyond the terms of reference of the Committee.

This is a serious limitation. Can the executive be allowed to set the terms on which it is to be judged? Accepting that it is the function of the executive to act in these matters, cannot some device be thought of whereby an inquiry into some matter of vital public importance is begun with fairly rational terms of reference? In the Kairon inquiry the Das Commission has interpreted the Memorandum submitted to the President in the most meaningful manner and to general satisfaction. But even so is it not odd that a Commission should function on the basis of a ‘catalogue of grievances’ and an ‘inartistic document’? Perhaps it may be possible to have a brief discussion in Parliament on the terms of reference of a commission and the views expressed there taken into account before finalising them.

The publication of reports submitted by Commissions of Inquiry also leaves scope for executive mischief. On the conclusion of the Denning inquiry there was lot of speculation about whether the report would be published. Luckily the Report turned out to be less damaging to the Government than was feared and Mr Macmillan made political capital by publishing it immediately.

When the Das Commission was set up Pandit Nehru went out of his way to draw a comparison between the Das inquiry and the Denning inquiry to emphasise that they were of a ‘private’ nature and the question of publishing the findings was kept open. In fact, when the Das Commission submitted its report Shri Lal Bahadur Shastri initially brushed aside demands that should be published, arguing that action on the report was more important. Public opinion, however, prevailed and Shri Gulzari Lal Nanda released the report almost in a hurry. In the earlier Malaviya–Serajuddin affair all that the public and the Parliament got to know was that on some of the charges Shri KD Malaviya was found guilty; there was no indication of the gravity of

these charges.

That is the serious shortcoming of a 'private' inquiry. Referring to this, the Denning report says: "It (a Commission of Inquiry) has the advantage that there can be no dissent, but it has two great disadvantages; first, being in secret, it has not the appearance of justice; second, in carrying out the inquiry, I have had to be detective, inquisitor, advocate and judge, and it has been difficult to combine them." Again, "my inquiry is not a suitable body to determine guilt or innocence. I have not the means at my disposal. Nor witness has given evidence on oath. None has been cross-examined. No change has been preferred. No opportunity to defend has been open." Shri K D Malaviya also cited the last ground to argue that he was not guilty even though he was resigning from the Government. It is necessary, therefore, to re-examine the utility of the 'private' inquiry whereby judges can be used for political purposes by the executive. If the executive does not move in the matter the judges themselves should act by refusing to take up such work. It cannot but harm the status of the judiciary if the people come to feel that the judges are allowing themselves to be used by the executive.

Even public inquiries end with the submission of the Commission's report, leaving the executive to act on the findings. The executive's behaviour may vary from outright rejection of the findings to slackness in corrective action. The British Labour Party Leader, Mr Harold Wilson, has said that a Commission of Inquiry enables the Government to buy Parliamentary time, avoid discussion till the Commission has reported and then ignore the matter playing upon the shortness of public memory. At the end of his report, Lord Denning has said: "My findings will, I trust, be accepted by them (public) as a full and sufficient vindication of their (the persons involved) good name. It is, I believe, better for the country that these rumours should be buried ..." By the same token, is not the Government obliged to accept the unfavourable findings of a Commission?

Referring to the conditions prevailing in India, Chief Justice Gajendragadkar, in his inaugural address at the centenary celebrations of the Advocates' Association of Western India, called for the establishment of a convention "whereby reports made by judges at the end of their inquiry under the Commissions of Inquiry Act should normally be accepted. ... We come across instances in which the report elaborately made by a judge is sent to an executive officer for his scrutiny, and the note by the officer becomes the basis of the Government's decision. Usually the Government announces its decision in a laconic manner and indicates broadly what conclusions of the judge it has accepted wholly or partially and what conclusions it has rejected. If it is felt that certain questions are required to be determined in a judicial or quasi-judicial manner, and they are, therefore, entrusted to the inquiry of a sitting judge,

considerations of propriety require that normally the findings and recommendations of the judge should be accepted by the Government. What the Government does is not a matter of significance to the judge himself, what is relevant and material is the impact of Government's action on the basic and essential postulates of the rule of law."

Fate of Naik Report

This was precisely the fate of the report submitted by Justice Naik on the bursting of the Khadakvasla Dam in July 1961. The Government appointed an officer to submit his notes on the report and in taking its decision, the Government did not accept all the findings of the Commission. Further, when the report was published, some vital mistakes crept into the printed copies which were such that they would have negated what Justice Naik wanted to say. The handling of the Naik report is said to have led to protests from the Chief Justice to the Government.

Even in the case of the Das report, the Education Minister, M C Chagla, took on the task of clearing Shri Brish Bhan from the strictures of the Das Commission. This led to the following telegraphic protest by a Member of Parliament: "Learn with regret that Das report is being scrutinised by Mr Chagla, Education Minister. No right to sit in appeal over the finding of ex-Chief Justice of the Supreme Court. This will cause alarm and consternation in the country. Pray, accept findings of the Das Commission as final."

Under the public inquiry procedure, in the personnel of the Commission are combined the roles of prosecutor, advocate and judge. In the Kairon case, whether for tactical reasons or in a spirit of civic duty, the Memorialists took over the role of prosecutors. But it need not be so and, as Lord Denning confessed, the judge may find it difficult to combine all the functions. The combination may, besides vitiate the authority and impartiality of the Commission's findings. It is, therefore, necessary to examine whether we cannot have a prosecuting counsel to conduct the inquisitorial role in the name of the judge. In France the Commissioner of Government does this work for the *Conseil d'Etat*. In America Senate investigations have the assistance of attorneys and the latter have done excellent work. Some such modification in the procedure will also lessen the burden of the Commission.

The purpose of an inquiry must to some extent determine the procedure followed. It is to be doubted if the procedure now followed by public inquiries is at all suitable for investigating allegations of corruption. The Das report says: "The Commission has, throughout this Inquiry, constantly borne in mind the two cardinal principles

which have made our laws and administration of justice noble and which bar the way to tyranny and arbitrary Government. These principles are:

- (1) That an individual must be presumed to be innocent until the contrary is proved beyond reasonable doubt by dependable evidence freely and publicly ascertained or by the irresistible probabilities of the case; and
- (2) that no individual shall be condemned on suspicion, however, strong.”

In arriving at its conclusions the Commission has, therefore, demanded the high standard of proof which our laws enjoin before it has accepted any allegation, however emphatically asserted, as evidence on which it could safely rely and confidently act.

In the arduous and trying task of holding the scale of justice even as between the contending parties, the Commission has spared no pains to ensure that “justice is not only done but also appears to have been done.”

These are fine principles and no one can dispute them. But for the particular purpose of unearthing corrupt practices, these methods are unsuited. This is affirmed by the Santhanam Committee on Corruption. It is suggested that public inquiries are without value. They are an elaborate and expensive procedure — the Vivian Bose Commission cost the Exchequer ₹1,55,000 — designed to deal with major scandals. It is, doubtless, an instrument which must be available for use in cases of major public importance where the investigation is likely to be difficult and complicated. But every attempt has to be made to maintain the authority and prestige of public inquiries by not abusing the procedure. Even the use of judges outside the Commissions of Inquiry Act, but for allegedly similar purposes, may diminish the prestige of the institution.